

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 60th Legislature (2025)

4 ENGROSSED SENATE
5 BILL NO. 642

By: Paxton of the Senate

and

Hilbert of the House

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9 An Act relating to workers' compensation; amending
10 85A O.S. 2021, Section 5, which relates to exclusive
11 liability; expanding rights and remedies granted to
12 certain persons; stating effect of provisions to
13 certain contracts; making language gender neutral;
14 updating statutory references; defining terms;
15 authorizing agreement between contractors to provide
16 certain insurance coverage; providing for deduction
17 of premiums under certain agreements; clarifying
18 application of certain rights and remedies;
19 prohibiting coverage for certain contractors without
20 agreement; providing for codification; and declaring
21 an emergency.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 85A O.S. 2021, Section 5, is
24 amended to read as follows:

25 Section 5. A. The rights and remedies granted to an employee
26 subject to the provisions of the Administrative Workers'
27 Compensation Act shall be exclusive of all other rights and remedies
28 of the employee, his or her legal representative, dependents, next

1 of kin, or anyone else claiming rights to recovery on behalf of the
2 employee against the employer, including a general contractor that
3 provides workers' compensation insurance coverage to a subcontractor
4 pursuant to Section 2 of this act, or any principal, officer,
5 director, employee, stockholder, partner, or prime contractor of the
6 employer on account of injury, illness, or death. Negligent acts of
7 a co-employee may not be imputed to the employer. No role,
8 capacity, or persona of any employer, principal, officer, director,
9 employee, or stockholder other than that existing in the role of
10 employer of the employee shall be relevant for consideration for
11 purposes of ~~this act~~ the Administrative Workers' Compensation Act,
12 and the remedies and rights provided by ~~this act~~ the Administrative
13 Workers' Compensation Act to an employee or other person claiming
14 rights to recovery on behalf of the employee shall be exclusive
15 regardless of the multiple roles, capacities, or personas the
16 employer may be deemed to have.

17 B. Notwithstanding the date of the injury, illness, or death of
18 an employee, nothing in subsection A of this section shall affect
19 any provision in an executed contract that requires the employer, or
20 any principal, officer, director, stockholder, partner, or prime
21 contractor of the employer, to indemnify, defend, or hold harmless
22 another person or entity against liability for the injury, illness,
23 or death of an employee, including, but not limited to, the ability
24 or requirement to insure for such claims.

1 C. Exclusive remedy shall not apply if:

2 1. An employer fails to secure the payment of compensation due
3 to the employee as required by ~~this act~~ the Administrative Workers'
4 Compensation Act. An injured employee, or his or her legal
5 representative in case death results from the injury, may, at his or
6 her option, elect to claim compensation under ~~this act~~ the
7 Administrative Workers' Compensation Act or to maintain a legal
8 action in court for damages on account of the injury or death; or

9 2. The injury was caused by an intentional tort committed by
10 the employer. An intentional tort shall exist only when the
11 employee is injured as a result of willful, deliberate, specific
12 intent of the employer to cause such injury. Allegations or proof
13 that the employer had knowledge that the injury was substantially
14 certain to result from the employer's conduct shall not constitute
15 an intentional tort. The employee shall plead facts that show it is
16 at least as likely as it is not that the employer acted with the
17 purpose of injuring the employee. The issue of whether an act is an
18 intentional tort shall be a question of law.

19 ~~C.~~ D. The immunity from civil liability described in subsection
20 A of this section shall apply regardless of whether the injured
21 employee is denied compensation or deemed ineligible to receive
22 compensation under ~~this act~~ the Administrative Workers' Compensation
23 Act.

1 ~~D.~~ E. If an employer has failed to secure the payment of
2 compensation for his or her injured employee as provided for in ~~this~~
3 ~~act~~ the Administrative Workers' Compensation Act, an injured
4 employee, or his or her legal representative if death results from
5 the injury, may maintain an action in the district court for damages
6 on account of such injury.

7 ~~E.~~ F. The immunity created by the provisions of this section
8 shall not extend to action against another employer, or its
9 employees, on the same job as the injured or deceased worker where
10 such other employer does not stand in the position of an
11 intermediate or principal employer to the immediate employer of the
12 injured or deceased worker.

13 ~~F.~~ G. The immunity created by the provisions of this section
14 shall not extend to action against another employer, or its
15 employees, on the same job as the injured or deceased worker even
16 though such other employer may be considered as standing in the
17 position of a special master of a loaned servant where such special
18 master neither is the immediate employer of the injured or deceased
19 worker nor stands in the position of an intermediate or principal
20 employer to the immediate employer of the injured or deceased
21 worker.

22 ~~G.~~ H. This section shall not be construed to abrogate the
23 loaned servant doctrine in any respect other than that described in
24 subsection ~~F~~ G of this section. Nothing in ~~this act~~ the

1 Administrative Workers' Compensation Act shall be construed to
2 relieve the employer from any other penalty provided for in ~~this act~~
3 the Administrative Workers' Compensation Act for failure to secure
4 the payment of compensation under ~~this act~~ the Administrative
5 Workers' Compensation Act.

6 ~~H.~~ I. For the purpose of extending the immunity of this
7 section, any architect, professional engineer, or land surveyor
8 shall be deemed an intermediate or principal employer for services
9 performed at or on the site of a construction project, but this
10 immunity shall not extend to the negligent preparation of design
11 plans and specifications.

12 ~~I.~~ J. If the employer has failed to secure the payment of
13 compensation as provided in ~~this act~~ the Administrative Workers'
14 Compensation Act or in the case of an intentional tort, the injured
15 employee or his or her legal representative may maintain an action
16 either before the Oklahoma Workers' Compensation Commission or in
17 the district court, but not both.

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 126 of Title 85A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. For the purposes of this section:

22 1. "General contractor" means a person who undertakes to
23 procure the performance of work or a service, either separately or
24 through the use of subcontractors. General contractor shall

1 include, but is not limited to, a principal contractor, an original
2 contractor, a prime contractor or other analogous term, and a
3 premises owner who contracts all or part of the work being performed
4 on the premises;

5 2. "Provides workers' compensation insurance coverage" means to
6 make available workers' compensation insurance coverage. Workers'
7 compensation insurance coverage may be provided, even if it does not
8 ultimately cover an incident, so long as it was made available to
9 the subcontractor. The following does not constitute acceptable or
10 relevant evidence to suggest that workers' compensation insurance
11 made available to a subcontractor was not provided to the
12 subcontractor:

- 13 a. timing discrepancies between the issuance of workers'
14 compensation insurance policies and contracts between
15 and among general contractors and subcontractors,
- 16 b. factual discrepancies in secondary documentation such
17 as certificates of insurance or enrollment forms,
- 18 c. a general contractor's lack of notice of election of
19 coverage, or
- 20 d. payment of premiums, or lack thereof, by the general
21 contractor; and

22 3. "Subcontractor" means a person who contracts with a general
23 contractor to perform all or part of the work or services that the
24 general contractor has undertaken to perform.

1 B. A general contractor and a subcontractor may enter into a
2 written agreement under which the general contractor provides
3 workers' compensation insurance coverage to the subcontractor and
4 employees of the subcontractor.

5 C. If a general contractor has workers' compensation insurance
6 to protect the general contractor's employees and if, in the course
7 and scope of the general contractor's business, the general
8 contractor enters into a contract with a subcontractor who does not
9 have employees, the general contractor shall be treated as the
10 employer of the subcontractor for the purposes of the Administrative
11 Workers' Compensation Act and may enter into an agreement for the
12 deduction of premiums paid in accordance with subsection D of this
13 section. A premises owner who acts as a general contractor shall be
14 treated as the employer of all subcontractors for the purposes of
15 the Administrative Workers' Compensation Act and may enter into an
16 agreement for the deduction of premiums paid in accordance with
17 subsection D of this section.

18 D. If a general contractor elects to provide coverage, then the
19 actual premiums based on payroll that are paid or incurred by the
20 general contractor for the coverage may be deducted from the
21 contract price or other amount owed to the subcontractor by the
22 general contractor.

23 E. An agreement under this section makes the general contractor
24 the employer of the subcontractor and the subcontractor's employees

1 only for the purposes of this title. A subcontractor or
2 subcontractor's employee's rights and remedies against the general
3 contractor or any principal, officer, director, employee,
4 stockholder, partner, or prime contractor of the general contractor
5 shall be subject to the limitations pursuant to Section 5 of Title
6 85A of the Oklahoma Statutes.

7 F. Notwithstanding subsection C of this section, a person who
8 performs work or provides a service for an oil or gas well operator
9 and who is an independent contractor that has no employees shall be
10 treated in the same manner as an independent contractor with
11 employees and is not entitled to coverage under the general
12 contractor's workers' compensation insurance policy unless the
13 independent subcontractor and the general contractor enter into an
14 agreement under this section.

15 SECTION 3. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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20 COMMITTEE REPORT BY: OVERSIGHT COMMITTEE ON JUDICIARY AND PUBLIC
21 SAFETT, dated - 04/22/2025 - DO PASS.
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